

would be helpful in resolving the appeal, and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request for an informal hearing. Any hearings will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) *Informal hearing procedures—(i) Presentations.* The Under Secretary shall provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) *Evidence.* The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding, and not unduly repetitious, will be received and considered.

(iii) *Procedural questions.* The Under Secretary has the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) *Report.* When the Under Secretary designates another BXA official to conduct an informal hearing, that official will submit a written report containing a summary of the hearing and rec-

ommended action to the Under Secretary.

(c) *Decisions—(1) Determination of appeals.* In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to BXA in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) *Effect of the determination.* The decision of the Under Secretary shall be final.

(d) *Effect of appeal.* Acceptance and consideration of an appeal shall not affect any administrative action, pending or in effect, unless the Under Secretary, upon request by the appellant and with opportunity for response, grants a stay.

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

## PART 758—EXPORT CLEARANCE REQUIREMENTS

Sec.

758.1 Export clearance requirements.

758.2 Use of export license.

758.3 Shipper's Export Declaration (SED).

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758.5 General destination control requirements.

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758.8 Return or unloading of cargo at direction of BXA, the Office of Export Enforcement or Customs Service.

758.9 Other applicable laws and regulations.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12852, Mar. 25, 1996, unless otherwise noted.

### § 758.1 Export clearance requirements.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Responsibility of licensee, exporter and agent.* (1) If you are issued a BXA license, or you rely on a License Exception described in part 740 of the EAR, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

(2) If you export without either a license issued by BXA or a License Exception, you are responsible for determining that the transaction is outside the scope of the EAR or the export is designated as "No License Required" as described in paragraph (a)(3) of this section.

(3)(i) *"No License Required"*. Items that are listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) but that do not require a license by reason of the Country Chart contained in Supplement 1 to part 738 of the EAR, and items designated EAR99 (See § 734.3(c) of the EAR entitled "Scope of the EAR") must be designated as "NLR", or "no license required", on your shipping documents in accordance with the provisions of this part.

(ii) *NLR notation.* Entering the symbol NLR is a representation to the U.S. Government that the items being exported are listed on the CCL but do not require a license by reason of the Country Chart or that they are within the scope of EAR99 (See § 734.3(c) of the EAR entitled "Scope of the EAR"); that they do not require a license under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the items are subject to the EAR.

(4) *License Exception symbol.* Entering a License Exception symbol on an export control document is a representation to the U.S. Government that the transaction meets all of the terms and conditions of the License Exception

cited. (See part 740 of the EAR for details regarding License Exceptions.)

(5) *Software and technology not subject to the EAR.* If you are exporting software or technology that is outside the scope of the EAR as described in §§ 734.7 through 734.11 of the EAR, you may use the symbol TSPA. Use of this symbol is optional; however, if you enter it on an export control document, you are making a representation to the U.S. Government that the technology or software is outside the scope of the EAR.

(b) *Forwarding agent—(1) Authorizing a forwarding agent.* A forwarding agent is a person the exporter authorizes to perform services that facilitate the export described on the Shipper's Export Declaration (SED). The agent must be authorized to act on behalf of the exporter either for the specific transaction for which the agent is submitting the SED or under a general power of attorney. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) provide the specific requirements for obtaining authorization as a forwarding agent.

(2) *Forwarding agent as licensee.* If the forwarding agent is appointed at the suggestion of a foreign buyer, the seller may insist that the agent apply for the export license. See § 748.5(a)(1) of the EAR which defines parties to a transaction.

(3) *Record and proof of agent's authority.* The power-of-attorney or other authorization from the exporter must be retained on file in the forwarding agent's office while the authorization is in force and for a period of five years after the last action taken by the forwarding agent under the authority. During this retention period, the forwarding agent must make its delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of § 762.6 of the EAR. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates its authority. (For further recordkeeping requirements see part 762 of the EAR).

(c) *Responsibility for compliance.* Acting through a forwarding agent, or

other agent or delegation or redelegation of authority, does not relieve anyone of responsibility for compliance with the EAR. Forwarding agents, carriers and others who participate in transactions that are subject to the EAR are also responsible for complying with the EAR.

(d) *Exports by U.S. Mail*—(1) *Exports made under a license issued by BXA*. Before making an export by U.S. Mail that is authorized by a license issued by BXA, you must enter the license number on the address side of the parcel and submit a properly executed SED to the post office at the place of mailing, when required by the regulations in this part and/or the Foreign Trade Statistics Regulations of the U.S. Bureau of the Census.<sup>1</sup>

(2) *Shipments without a license*. The requirements of this paragraph apply whenever you export items that do not require a license under the EAR. These requirements apply regardless of whether your transaction does not require a license because the item you are going to ship is encompassed with EAR99 (See §734.3(c) of the EAR entitled “Scope of the EAR”), because the item, although on the list, does not require a license to be exported to the destination to which you intend to ship or because the transaction qualifies for a License Exception as described in part 740 of the EAR.

(i) *Shipments to Canada for consumption therein*. An SED is not required for exports of items to Canada if the items are for consumption in Canada and the export transaction does not require a license from BXA. Note that if the item you are exporting to Canada is controlled by another government agency, the regulations of that agency may require you to file a SED.

<sup>1</sup>The Shipper’s Export Declaration (U.S. Department of Commerce form 7525-V) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or it may be privately printed. Form 7525-V-Alt (Intermodal), must be privately printed. Privately printed forms must strictly conform to the official form in all respects. Samples of these forms may be obtained from the Bureau of the Census, Washington, DC 20233, local Customs offices, and the U.S. Department of Commerce District Offices.

(ii) *Shipments to Puerto Rico or U.S. territories or possessions*. Exports of items to Puerto Rico or the U.S. territories or possessions do not require a license issued by BXA. However, the regulations of the Census Bureau (15 CFR part 30) may still require you to file a SED.

(iii) *Shipments valued over \$500*. When mailing an item from one business concern to another where the total value of the items being shipped exceeds \$500, you must present an executed SED to the post office at the place of mailing unless the EAR or the Bureau of the Census Foreign Trade Statistics Regulations specifically provide an exception to this requirement. If either the exporter or recipient is not a business concern, no SED is required.

(iv) *Designation on SED and/or parcel*. If you are exporting an item that is encompassed within EAR99 (See §734.3(c) of the EAR entitled “Scope of the EAR”), or one that is listed on the CCL but no license is required to the destination to which you are shipping, or you are exporting pursuant to a License Exception, as described in part 740 of the EAR, you must enter the appropriate symbol indicating the absence of a license requirement either NLR, meaning “No License Required” or the applicable License Exception symbol, on the SED and on the address side of the parcel along with the phrase “Export License Not Required.” If your transaction is one for which you are not required to file a SED, you must enter the appropriate symbol NLR, meaning no license required or of the applicable License Exception on the address side of the parcel along with the phrase “Export License Not Required.” If you are exporting technology or software that is outside the scope of the EAR as described in §734.7 through 734.11 you may enter the symbol TSPA.

(A) By entering the symbol NLR you are representing to the U.S. Government that the items you are exporting are listed on the CCL (See Supplement No. 1 to part 774 of the EAR) but do not require a license by reason of the Country Chart (Supplement No. 1 to part 738 of the EAR) or because they are encompassed within the EAR99 (See §734.3(c) of the EAR entitled “Scope of the

EAR"); that they do not require a license under General Prohibitions One (Exports and reexports of controlled items to listed countries), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the item is subject to the EAR.

(B) By entering a License Exception symbol, you are representing to the U.S. Government that your transaction meets all of the terms and conditions of the License Exception you are using. (See part 740 of the EAR for details regarding License Exceptions).

(C) By entering the symbol TSPA you are representing to the U.S. Government that the technology or software you are exporting is outside the scope of the EAR.

(v) *Gift parcels.* If you are sending a gift parcel pursuant to the requirements of § 746.16 of the EAR, you must enter the phrase "Gift—export license not required" on any customs declaration documents and on the address side of the parcel.

(vi) *Software and technology.* If you are exporting software or technology, the export of which is authorized under the License Exceptions in § 740.6 or § 740.13 of the EAR, you do not need to make any notation on the package. If you are exporting software or technology that is outside the scope of the EAR, check to see if any other agency's regulations require specific markings on the package.

(3) When you enter any of the symbols or phrases referred to in paragraph (d) of this section on the documents or packages, you are certifying to the post office and to BXA that you are exporting the package in compliance with all of the terms and provisions of an applicable License Exception or other authority to export.

(e) *Exports by means other than U.S. Mail.* (1) When SEDs are required to be submitted, the exporter or the exporter's agent must present a duly executed SED to the exporting carrier before the vessel, aircraft, or overland transport depart.

(i) Exemptions to SED. A SED is not required for:

(A) Any shipment, other than a shipment made under a license issued by BXA, to any country in Country Group B (see Supplement No. 1 to part 740 of the EAR) or to the People's Republic of China if the shipment is valued at \$2,500 or less per Schedule B Number (or other number acceptable to the Foreign Trade Division, Bureau of the Census). The Schedule B number of an item is shown in the current edition of the *Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States*. In paragraph (e) of this section, "shipment" means all items classified under a single Schedule B number (or other number acceptable to the Foreign Trade Statistics Division, Bureau of the Census), shipped on the same carrier, from one exporter to one importer. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) shall govern the valuation of items when determining whether a shipment meets the \$2,500 threshold of this paragraph.

(B) Any shipment reported under the provisions of the Monthly Reporting Procedure (§ 758.3(o) of this part); or

(C) Any shipment made under any other exception to the SED requirements found in Subpart B of the Bureau of the Census' Foreign Trade Statistics Regulations.

(ii) *Exceptions from SED requirements.*

(A) *Statement on shipping documents.* If you are exempt by paragraph (e)(1) of this section from the requirement of filing a SED, the Bureau of the Census Foreign Trade Statistics Regulations (FTSR) (15 CFR 30.50), require you to make a statement on the bill of lading, air waybill, or other loading document describing the basis for the exemption and referencing the specific section of the FTSR where the exemption is provided, unless the exemption is based on value and destination. If the exemption is based on the value and destination of your shipment, you must state the basis for the exemption, but you do not have to cite a reference to the specific section of the FTSR containing the exemption.

(B) *Monthly reporting procedures.* (1) All forwarders or brokers who use the monthly reporting procedures described in FTSR § 30.39 (15 CFR 30.39) on

behalf of exporters who are not themselves exempt from the individual filing requirement must also include on the bill of lading, air waybill (including house air waybill), or other loading document either the number of and expiration date of an export license issued by BXA, or the appropriate symbol indicating the inapplicability of an export license requirement (either NLR, meaning “No License Required” or of the applicable License Exception, from part 740 of the EAR).

(2) The notation required by paragraph (e)(1)(ii)(B)(*f*) of this section applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a “master” bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the goods or data prior to lading on the carrier.

(2) *Export carrier SED information.* The exporting carrier, or if none is utilized, the exporter or agent is responsible for the accuracy of the following items of information (where required) on the SED:

- (i) Name of carrier (including flag of vessel),
- (ii) U.S. Customs port of export,
- (iii) Method of transportation,
- (iv) Foreign port of unloading,
- (v) Bill of lading or air waybill number, and
- (vi) Whether or not containerized.

(3) *Exports not requiring a license.* Even if your shipment does not require a license from BXA, it may still require a SED. Before shipping, check the Bureau of the Census Foreign Trade Statistics Regulations for the complete SED requirements.

(f) *Shipments transiting Canada en route to other countries—(1) Shipments moving under individual SED.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual SED is required by this part 758, the U.S. exporter must submit to the Canadian Customs authorities at the Canadian port of entry a copy of the U.S. SED, Form 7525-V, certified by the ex-

porter as “A True Copy” of the original SED.

(2) *Shipments for which individual SED are not required.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual SED is not required because:

(i) The forwarder or broker is authorized to report export information to Census by means other than an individual SED; or

(ii) The shipment qualifies for a specific exemption (listed in Subpart D of the Census Bureau Foreign Trade Statistics Regulations), the forwarder or broker must include the number of and expiration date of the license issued by BXA, or the appropriate symbol indicating the inapplicability of an export license requirement (either NLR, meaning “No License Required” or the applicable License Exception from part 740 of the EAR on the bill of lading or other loading document as directed in paragraph (e)(2) of this section). The bill of lading or other loading document properly annotated with respect to the FTSR SED exemption or exception, along with the license authorization, when required, must be displayed to the Canadian Customs authorities at the Canadian port of entry and a copy provided, if requested by the Canadian authorities.

[61 FR 12852, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25468, May 9, 1997]

#### § 758.2 Use of export license.

(a) *License valid for shipment from any port.* A license issued by BXA authorizes exports from the United States from any U.S. port of export unless the license notes otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before final export to a foreign country will be treated as an export from the last U.S. port of export.

(b) *Shipments against expiring license.* (1) Any item that has not departed from the last U.S. port of export by midnight of the expiration date of the license may not be exported under that license unless the shipment meets the requirements of paragraph (b)(1)(i) or (ii) of this section.

- (i) BXA grants an extension; or
- (ii) Prior to midnight of the expiration date of the license, the items:
  - (A) Were laden aboard the vessel; or
  - (B) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(2) When the vessel is expected to be available at the pier for loading before the license expires, but exceptional and unforeseen circumstances delay it, the items may be exported without an extension of the license, if in the judgment of the U.S. Customs Service or BXA, undue hardship would otherwise result.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item subject to the same limitations as to quantity or value as described on the license to the same consignee and destination under the same license. Before reshipping, the exporter must submit to the BXA satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure. If an item is to be reshipped to any person other than the original consignee, the shipment is deemed to be a new export and is subject to all current EAR regarding the specific item and destination.

[61 FR 12852, Mar. 25, 1996, as amended at 62 FR 25468, May 9, 1997]

### **§ 758.3 Shipper's Export Declaration (SED).**

(a) *SED presentation requirement.* Both the Foreign Trade Statistics Regulations of the Census Bureau (15 CFR part 30) and these Export Administration Regulations require that SED's be submitted to the U.S. Government. There are a few exceptions to this rule, but if you are required to submit a SED you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port of export.

(b) *SED is a statement to the U.S. Government.* Your SED is a statement to the U.S. Government in which you assert that all of the information shown

on the SED is true. You may execute and submit the SED only if you are the exporter or the duly authorized forwarding agent of an exporter.

(c) *Limitation on time when SED may be used.* No one may use a SED to export, or facilitate or effect an export, after the expiration of the applicable license or after the termination of the applicable License Exception or provisions of the EAR that authorize export without a license, except as provided in § 750.7(f) (License validity period) of the EAR and § 758.2(b) (Shipments against expiring license) of this part.

(d) *Additional copies of the SED.* You are required to submit additional copies of the SED when:

(1) BXA or one of its component offices asks you to send it copies of the SED for exports:

(i) Authorized by a license (see paragraph (l) of this section);

(ii) Authorized by a Special Comprehensive License (see § 752.16(a)(5) of the EAR); or

(iii) The items are controlled for short supply reasons (see part 754 of the EAR); or

(iv) Required by § 758.1(f) (shipments transiting Canada) of this part.

(2) You are required under the provisions of § 754.2(j)(2) of the EAR.

(e) *Statements on SED.* Whenever a SED is presented to a carrier, a customs office, or a postmaster, the exporter represents that:

(1) All statements and information on the SED have been furnished by the exporter or on the exporter's behalf to effect an export under the provisions of the EAR;

(2) Export of the items described on the SED is authorized under the "No License Required" provisions of the EAR as described in § 758.1(a) of this part, a License Exception described in part 740 of the EAR or the license identified on the SED;

(3) Statements contained on the SED are consistent with the contents of the license or the terms, provisions, and conditions of the applicable License Exception or of the applicable "No License Required" provisions of the EAR as described in § 758.1(a) of this part; and

(4) All other terms, provisions, and conditions of the EAR applicable to the export have been met.

(f) *Items that may be listed on the same SED*—(1) *General*. Except as described in paragraph (f)(2) of this section, more than one item may be listed on the same SED provided they are contained in one shipment on board a single carrier and are going from the same exporter to the same consignee. Even if some of the items are being shipped under authority of a license and others under a License Exception or the “No License Required” (NLR) provisions of the EAR (as described in § 758.1(a) of this part), they may still be shown on one SED. For the second and subsequent authorizations used, the applicable license number and expiration date, License Exception symbol, or the symbol NLR must be shown along with the descriptions (including quantity, if required, Schedule B number or other number acceptable to the Foreign Trade Division, Bureau of the Census, and value) to which each authorization applies must be shown under each of the properly aligned line item descriptions. The following apply for notations made on the SED:

(i) Entering the license number and expiration date is a representation to the U.S. Government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or “NLR” is a representation to the U.S. Government that the shipment meets one of the applicable provisions of paragraph (a)(3) of § 758.1 of this part.

(2) *Exception*. Separate SED’s must be prepared and presented for each vehicle when more than one vehicle is used to make the shipment. Customs Directors may waive this requirement if a shipment is made under a single bill of lading or other loading document and all the items listed on the SED are cleared simultaneously.

(g) *Schedule B number and item description*. (1) *Schedule B number*. You must enter the Schedule B number (or other number acceptable to the Foreign Trade Division, Bureau of the Census), as shown in the current edition of Schedule B, *Statistical Classification of Domestic and Foreign Commodities Ex-*

*ported from the United States*, in the designated column of the SED or other number acceptable to the Foreign Trade Division, Bureau of the Census regardless of whether the shipment is being exported under authority of a license issued by BXA, a License Exception described in part 740 of the EAR, or the “No License Required” (NLR) provisions of the EAR as described in § 758.1(a) of this part.

(2) *Item description for exports under a license*—(i) *General*. If your export is being made under the authority of a license issued by BXA, you must enter the item description shown on the license on the SED. However, if part of the description on the license is underlined, you need place only the underlined portions on the SED. The item description on the license will be stated in CCL terms, which may be inadequate to meet Census Bureau requirements. In this event, the item description you place on the SED must be given enough additional detail to permit verification of the Schedule B number (or other number acceptable to the Foreign Trade Division, Bureau of the Census) (e.g., size, material, or degree of fabrication).

(ii) *Distinguishing characteristics or specifications*. If a commodity classification in Schedule B (or other schedule acceptable to the Foreign Trade Division, Bureau of the Census) has instructions such as “specify by name”, “state species”, etc., you must furnish that information in the column of the SED provided for the commodity description. When a single SED covers more than one item classifiable under a single classification carrying the “specify by name” or similar requirement, you must enter each item separately in this column. However, if more than five items are involved, all classifiable under one Schedule B number or “other number acceptable to the Foreign Trade Division, Bureau of the Census” only the five items of greatest value in the classification need be shown separately. Separate quantities, values, and shipping weights for individual items are not required in either case.

(3) *Item description for License Exception shipments or shipments for which no license is required*. For items that may

be exported under authority of a License Exception, or under the NLR provisions of the EAR (as described in § 758.1(a) of this part), you must enter a description in sufficient detail to permit review by the U.S. Government and verification of the Schedule B number or "other number acceptable to the Foreign Trade Division, Bureau of the Census" entered on the SED.

(h) *License number or other authorization designation*—(1) *Exports under the authority of a license issued by BXA.* You must show the license number and expiration date, the Export Control Classification Number (ECCN) and the item description, in the designated spaces of a SED covering an export under a license issued by BXA (the space for the item description on the SED form may be headed "commodity description"). If you intend to include other items on the SED that may be exported under a License Exception, or under the "No License Required" (NLR) provisions of the EAR (as described in § 758.1(a) of this part) you must show the License Exception or NLR symbol, along with the specific description (quantity, Schedule B number or "other number acceptable to the Foreign Trade Division, Bureau of the Census", value) of the item(s) to which the authorization applies in the designated spaces on the SED continuation sheet.

(2) *Exports not needing a license.* In addition to the item description, the appropriate License Exception symbol, or the "No License Required" symbol (NLR) must be shown in the appropriate column of each SED or SED continuation sheet covering a shipment under authority of a License Exception (see part 740 of the EAR), or "No License Required" provisions of the EAR (as described in § 758.1(a) of this part). If several authorizations are to be listed on one SED, the SED and continuation sheets must be completed as described in paragraph (f)(1) of this section. If the item(s) will be exported under the provisions of License Exceptions GBS, CIV, or LVS, or under the "NLR" provisions of the EAR (as described in § 758.1(a) of this part) and the item(s) are covered by entries on the Commerce Control List that have the column identifier "NS Column 2" controlled for "NS" reasons, the ECCN

must also be shown in the designated space on the SED or SED continuation sheet. The following apply for notations made on SED:

(i) Entering the license number and expiration date is a representation to the U.S. Government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or "NLR" is a representation to the U.S. Government that the shipment meets one of the applicable provisions of paragraphs (a)(3) through (a)(4) of § 758.1 of this part.

(3) If you are exporting technology or software that is outside the scope of the EAR as described in §§ 734.7 through 734.11 of the EAR, you may enter the symbol TSPA on the SED. Use of this symbol is optional, however, if you enter it, you are representing to the U.S. Government that the software or technology you are exporting is outside the scope of the EAR.

(i) *Optional ports of unloading*—(1) *Applicability.* If, prior to the departure of the exporting carrier, the exporter does not know at what port the shipment will be unloaded, the exporter may designate optional ports of unloading on the SED and bill of lading or air waybill in accordance with the provisions of this paragraph. There are restrictions on the countries in which these optional ports may be located. The restrictions depend on whether the export is authorized under the "No License Required" provisions of the EAR (as described in § 758.1(a) of this part), the License Exceptions described in part 740 of the EAR, or a license (See paragraph (j)(3) of this section).

(2) *Exemptions.* You may never designate an optional port of unloading for a shipment destined directly or indirectly to Country Group D:1 in Supplement No. 1 to part 740 of the EAR (except for the People's Republic of China), Libya, Cuba, or North Korea.

(3) *Shipments for which no license is required or which are authorized by a License Exception.* (i) For exports under the authority of the "No License Required" provisions of the EAR (as described in § 758.1(a) of this part), if the exporter does not know which of several countries in Country Group B or the People's Republic of China is the



country of ultimate destination, the exporter may name optional ports of unloading in one or more of these countries.

(ii) When an export under any License Exception is shipped in transit through a country other than the country of ultimate destination, the exporter may designate optional ports of unloading in one or more countries, together with the name and address of the intermediate consignee in each country designated.

(4) *Restrictions on optional ports of unloading.* The optional ports of unloading, which the exporter designates on the SED pursuant to paragraph (i)(3)(i) of this section, must be in a country to which the item being unloaded may be exported directly from the United States under the same or another applicable “No License Required” provision of the EAR (described in § 758.1(a) of this part), or License Exception contained in the EAR.

(5) *Shipments under a license issued by BXA.* For exports under a license, optional ports of unloading are restricted to the country of ultimate destination, unless either the transaction complies with the provisions of § 750.7 of the EAR dealing with continuity of shipments, or the license designates intermediate consignees in other countries. In the latter case, the optional ports of unloading must be designated as optional intransit points on the SED, or if there is no SED, on the Shipper’s Letter of Instructions, or, if there is neither, the optional port of unloading must appear on another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, and on the bill of lading or air waybill.

(6) *Correcting the SED.* As soon as the exporter, or the exporter’s forwarding agent or carrier determines at which port the shipment is to be unloaded (whether in the country of ultimate destination or in a country of transit), that person must correct the SED to show the specific port of unloading and the name and address of the intermediate consignee to whom delivery is to be made. An intermediate consignee must be shown if the port of unloading is located in a country other than the country of destination. If the export is un-

loaded at more than one port, the quantity and value unloaded at each port and the name and address of each intermediate consignee must be given. The procedures for correcting and filing SEDs may be found in paragraph (n) of this section.

(j) *Signature on SED.* The exporter or the exporter’s authorized forwarding agent, or an authorized employee of either, may sign the SED. In general, the requisite authority rests with employees who, by their official titles, are apparently vested with power to deal with exports, such as export managers or such corporate officers as the president, vice president, treasurer, and secretary of a corporation, any partner of a partnership, and any responsible head of any other form of private or quasi-governmental organization, and assistant officers. The signature of such person, whether that of the exporter or authorized agent or employee, constitutes a representation by the exporter that all statements and information in the SED are true and correct. In addition, if the signature is that of the forwarding agent, or the forwarding agent’s duly authorized officer or employee, such signature constitutes a like representation by the forwarding agent.

(k) *Attachment to SED.* (1) If you need additional space for any information on the SED, you may use additional copies of the SED or copies of the continuation sheet. In such cases, only one SED need be signed. You must number the additional sheets in sequence and securely attach them to the executed SED. You must insert the following statement on the last line of the description line of the SED form itself:

This SED consists of this sheet and \_\_\_\_\_ continuation sheets.

(2) No portion of any form attached as a continuation sheet may be torn off or removed.

(l) *Special requirements for additional information and documents.* (1) A license may bear on its face a requirement to submit a SED or other documents (or information) to the Office of Export Enforcement in addition to that furnished when the application was filed. The exporter and the person submitting the documents represent that the

documents are complete, truthful and accurate. The Export Administration Regulations prohibit the making of false representations to the U.S. Government in any export control matter (see § 764.2(g) of the EAR). The licensee must furnish the documents to: Office of Export Enforcement, Room H-4520, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

(2) When required, the licensee must:

(i) Prepare one copy of the SED in addition to the number of copies otherwise required;

(ii) Enter the additional information called for by the license in the space between the column provided for marks and numbers of the shipment and the column provided for its value on all copies of the SED; and

(iii) Unless otherwise specified on the license, attach the required documents (either original or certified copy) to the extra copy of the SED.

(m) *SED for shipments moving in-transit.* (1) *Applicability.* Use the SED for In-transit Goods, Commerce Form 7513,<sup>2</sup> for the following types of transactions:

(i) Items departing the United States by vessel, which transited through, or transshipped in, ports of the United States, destined from one foreign country or area to another.

(ii) Foreign merchandise exported from a General Order Warehouse and the export of foreign-origin merchandise that was rejected after government inspection or examination. Shipments in bond transiting the United States being exported by means of any carrier other than a vessel may be cleared for export without presenting a Form 7513, unless a license is required for the export.

(2) *Exports from Foreign Trade Zones.* You may not use Form 7513 for any exports from Foreign Trade Zones. Such shipments require the filing of the SED (Form 7525-V), unless otherwise exempted, with the applicable zone number reported on the Document.

<sup>2</sup> Form 7513 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, the local customs offices, or may be privately printed.

(3) *Additional information.* The following additional information must be entered on a SED for In-transit Goods:

(i) The name and address of the intermediate consignee in a foreign destination, if any, must be shown below the description of the items.

(ii) Underneath the name and address of the intermediate consignee, one of the following statements, whichever is appropriate, must be entered:

(A) For intransit shipments of foreign-origin merchandise (see part 772 of the EAR for a definition of "foreign-origin,"), enter the following statement:

The merchandise described herein is of foreign-origin.

(B) For intransit shipments of domestic (U.S.) merchandise, enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States.

(C) For intransit shipments of items of U.S.-origin eligible for the *intransit* provisions of License Exception TMP (see § 740.9(b) of the EAR), enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States, but has been so altered by further processing, manufacture, or assembly in a foreign country that it has either been substantially enhanced in value, or has lost its original identity with respect to form.

(iii) The items must be described in terms of Schedule B, including the appropriate Schedule B number or "other number acceptable to the Foreign Trade Division, Bureau of the Census".

(4) See § 30.8 of the Foreign Trade Statistics Regulations (15 CFR 30.8) for additional requirements concerning the information that must be placed on a SED for In-transit Goods.

(n) *Correction, change, alteration, or amendment of SED—(1) Methods of changing SED's.* The exporter or the exporter's agent must report corrections, cancellations, additions or amendments to information reported on SEDs

to the Customs Director at the port of exportation (or, in the case of mail shipments, to the Postmaster at the post office where the shipment was mailed) as soon as the need for such changes is determined. See the Foreign Trade Statistics Regulations (15 CFR

part 30) for additional information about how to correct SEDs and file the corrections. If you are required by paragraph (l) of this section to file a copy of the original SED with the Office of Export Enforcement (OEE), a copy of the changed SED should be sent to OEE at the address shown in paragraph (l) of this section with the words "Correction Copy" conspicuously shown in the upper right portion of the form.

(2) *Responsibility.* Nothing in this section relieves you or any person or firm making changes on the SED from responsibility for any such changes. Acceptance of a changed SED by the Customs office does not imply approval of any act involved in the shipment or acceptance of the truth or accuracy of the information provided.

(o) *Summary monthly reports in lieu of individual SED's—(1) Scope.* This paragraph contains only basic information about the monthly filing procedures for the SED. Details of the procedure may be found in §30.39 of the Foreign Trade Statistics Regulations (FTSR) of the Bureau of the Census (15 CFR 30.39). Exporters interested in the procedure should consult §30.39 of the FTSR to ascertain qualifications, how to apply for the privilege of participating, how to file electronically after approval is given, and other pertinent facts.

(2) *Applicability.* Approved parties may file monthly SEDs with the Bureau of the Census for export to destinations in Country Groups B and D (see Supplement No. 1 to part 740 of the EAR).

(3) *How to request monthly reporting privileges—(i) Addresses.* (A) A request for the privilege of participating in monthly reporting procedures should be forwarded to: Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233.

(B) A copy of all requests must be sent to: Office of Export Enforcement, Room H-4616, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230.

(ii) *Certification requirements.* The request must include the following certification by the applicant:

I (We) certify that I (we) have established adequate internal procedures and safeguards to assure compliance with the requirements

set forth in the U.S. Department of Commerce Export Administration Regulations and Foreign Trade Statistics Regulations. Among other things, these procedures and safeguards assure:

(1) A proper determination as to whether a license is required for a particular export;

(2) Actual receipt of the export license, if required, before the shipment is exported;

(3) Compliance with all the terms of the license, License Exception, or NLR provisions of the EAR as applicable;

(4) Return of licenses to BXA in accordance with §750.8(b) of the Export Administration Regulations, if requested;

(5) Compliance with the destination control statement provisions of §§758.5 and 758.6 of the Export Administration Regulations;

(6) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(7) Compliance with the recordkeeping requirements of part 762 of the EAR and, in addition, I (we) agree that my (our) office records will be made available for inspection by the Bureau of the Census, BXA or the U.S. Customs Service, upon request, to verify that a given shipment was properly included in a particular monthly report.

(4) *Exporter's agent.* If the exporter intends to authorize a forwarding agent to file electronically on the exporter's behalf, the exporter's request must include the name and address of each such forwarding agent.

(5) *Authorization by Census to use monthly reporting procedure.* Any authorization to file summary monthly reports in lieu of individual SEDs may be granted only by the Bureau of the Census with the concurrence of BXA.

(6) *Export clearance.* (i) *Destination control statement.* In addition to the exporter's responsibility for assuring that the proper destination control statement is placed on the commercial invoice as required by §758.6 of this part, the exporter or the exporter's forwarding agent is responsible for assuring that the carrier places the proper destination control statement on the related bill of lading or air waybill.

(ii) *Detention and examination.* Shipments being reported under the summary filing procedure described in this paragraph are subject to inspection, examination and detention, as provided in §758.7 of this part, whenever an official of BXA, a customs officer, or a

postmaster deems such action necessary to assure compliance with the EAR.

(7) *Revocation of authorization.* An authorization to file summary monthly reports in lieu of individual SED's, granted under the provisions of § 30.39 of the Foreign Trade Statistics Regulations (15 CFR 30.39) and this paragraph, may be revoked, suspended, or revised at any time.

(8) *Effect of other provisions.* Insofar as consistent with the provisions of this paragraph that relate specifically to filing electronically in lieu of individual SED's, the other provisions of this part 758 apply to exports reported under this procedure.

[61 FR 12852, Mar. 25, 1996, as amended at 61 FR 27257, May 31, 1996; 61 FR 64285, Dec. 4, 1996; 62 FR 25468, May 9, 1997]

#### **§ 758.4 Conformity of documents for shipments under export licenses.**

(a) *Applicability.* The rules of conformity in this section apply to shipping documents used in connection with any shipment under the authority of a license issued by BXA except "master" air waybills issued by consolidators. These rules apply to any individual air waybill issued by a consolidator (indirect carrier) for an export included in a consolidated shipment and to any air waybill issued by anyone in connection with an export not included in a consolidated shipment.

(b) *Compliance.* You may not issue, prepare, or procure a bill of lading that is contrary to the provisions of this section. Officials of BXA and the U.S. Customs Service are authorized to require any document or to use any other appropriate methods to ensure compliance with the rules of conformity in this section.

(c) *Rules of conformity—(1) General.* The following documents must be consistent with each other:

- (i) The license issued by BXA;
- (ii) One of the following applicable documents:
  - (A) The SED;
  - (B) If there is no SED, the Shipper's Letter of Instructions; or
  - (C) If there is neither, another document containing instructions that the

exporter conveys (either directly or through an agent) to the carrier; and

(iii) The outbound bill of lading (including a railroad through bill of lading) covering a particular export shipment must be consistent with one another.

(2) *Signs of inconsistent documents.* The bill of lading, whether in negotiable or nonnegotiable form, is not consistent with those other documents if:

(i) It does not provide for delivery of the shipment (cargo) at a port located in the country of either the ultimate or intermediate consignee named in the documents described in paragraph (c)(1)(ii) of this section;

(ii) It contains any indication that the shipment is intransit to a country of ultimate destination different from that named in the appropriate one of the documents described in paragraph (c)(1)(ii) of this section, or that the shipment is not for consumption in such country of ultimate destination. For example, it would be inconsistent to consign a shipment to the ultimate destination with a qualifying phrase indicating the shipment is "in transit" at that destination, or to consign the shipment to a free zone or free port;

(iii) It names as shipper any person other than the licensee (the person to whom a license is issued) or the licensee's duly authorized forwarding agent. Where shipments from more than one licensee are consolidated on a single bill of lading, the shipper named on the bill of lading must also appear as the authorized forwarding agent for each exporter on each document described in paragraph (c)(1)(ii) of this section.

(iv) The name and address of the ultimate consignee are not shown either in the space provided for "consignee" or in the body of the bill of lading under the caption "ultimate consignee and notify party" or, in the case of the air waybill, under the caption "also notify." However, where shipments to more than one ultimate consignee are consolidated on one bill of lading and not all are shown in the body of the bill of lading, the name of the intermediate consignee (customs broker or consolidator's agent in the foreign

country) who will receive and distribute the items to the ultimate consignees must appear on the bill of lading, the export license(s), and documents listed in paragraph (c)(1)(ii) of this section.

(3) *Additional rules for negotiable bills of lading.* A negotiable bill of lading (an “order” bill of lading) is deemed consistent with the appropriate one of the documents described in paragraph (c)(1)(ii) of this section only if the consignee or order party named on the bill of lading is also named in the SED, the Shipper’s Letter of Instructions or the other document.

(i) Sometimes “order” bills of lading consign the items they cover to the order of the shipper, to the order of an intermediate consignee such as a bank, foreign freight forwarder, or other intermediary, or to the order of a purchaser who is not the same person as the ultimate consignee. An “order” bill of lading issued in any of these forms constitutes a representation by the shipper that:

(A) The items covered by the appropriate one of the documents described in paragraph (c)(1)(ii) of this section and bill of lading are ultimately destined to the ultimate consignee stated on the license;

(B) The “order” bill of lading has not been used for the purpose of evading the terms and conditions of the license; and

(C) Pursuant to the contract of carriage, the items will be delivered at a port located in the country of the ultimate consignee or of the intermediate consignee named on the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

(ii) [Reserved]

(4) *Item description.* On the bill of lading the items may be described in terms of the freight tariff classification or other type of classification, but may not be inconsistent with the description shown on the appropriate one of the documents described in paragraph (c)(1)(ii). These documents must include the same item description as shown on the related license, and, in addition, it must include more detailed information where required by the Bureau of the Census.

(5) *Carrier’s manifest.* If the carrier’s outward foreign manifest filed with the U.S. customs office contains the names of shippers or consignees, these names must not be inconsistent with the names shown on the bill of lading and the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

#### **§ 758.5 General destination control requirements.**

(a) *Scope.* This section sets forth some actions the parties to a transaction authorized by a license issued by BXA are prohibited from taking. The purpose of these prohibitions is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the goods are unloaded in a country other than that of the ultimate consignee or intermediate consignee as stated on the export license.

(b) *Destination on bill of lading or air waybill—(1) Requirements to prevent diversions—(i) Statements on bill of lading or air waybill.* (A) A carrier (or any other person on behalf of any carrier) may not issue a bill of lading or air waybill providing for delivery of cargo at any foreign port located outside the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part.

(B) *Optional ports on bill of lading or air waybill.* No carrier may issue a bill of lading or air waybill providing for delivery of cargo at optional ports to the ultimate consignee named on one of the appropriate documents described in § 758.4(c)(1) (i) and (ii) of this part where one of such optional ports is not in the country of ultimate destination named on the license or SED, or if there is no SED, the Shipper’s Letter of Instructions, or if there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, without prior written authorization from BXA. However, where the appropriate document described in § 758.4(c)(1) (i) and (ii) of this part provide for delivery of cargo to optional intermediate consignees located in ports in different countries, the carrier

may issue a bill of lading or air waybill providing for delivery at such optional ports.

(ii) [Reserved]

(2) *Delivery of cargo.* No carrier may deliver cargo to any country other than the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part at the request or option of the shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person having custody or control of the shipment, without prior written authorization from BXA to the carrier or its agent.

(c) *Duties when items are unloaded in a unauthorized country.* If the items are unloaded in a country other than that of the intermediate or ultimate consignee as stated on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, the procedures described in this paragraph must be followed.

(1) *Reasons beyond carrier's control.* Nothing contained in the EAR shall be deemed to prohibit a carrier from unloading cargo at a port outside the country of intermediate or ultimate destination shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, where for reasons beyond the control of the carrier (as set forth in the standard provisions of the carrier's bill of lading or air waybill, such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances, or insurrections), it is not feasible to deliver the cargo at the licensed port of destination.

(2) *Required actions for unscheduled unloading.* (i) If the item is unloaded in a country to which that item may be exported without a license issued by BXA, no one is required to notify BXA of the unloading. The exporter may dispose of the items in that country without approval of BXA. When making such a disposition you must still comply with any conditions or requirements of the License Exception or other provisions of the EAR that would authorize the export of the item being unloaded to the country in which you are disposing of it, and any regulations of other government agencies that

apply to the transaction. This paragraph does not authorize anyone to take any action with knowledge that a violation of the Export Administration Act, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur or is intended to occur, or to deliver to a denied party or to take any other action prohibited by the EAR.

(ii) If a license issued by BXA would be required to export the item to the country in which it is unloaded:

(A) No person may take any steps to effect delivery or entry of the items into the commerce of the country where unloaded without prior approval of BXA;

(B) The carrier must take steps to assure that the items are placed in custody under bond or other guaranty not to enter the commerce of such country or any country other than the countries of the ultimate and intermediate consignees shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, without prior approval of BXA;

(iii) The carrier, the carrier's agent located in the United States, and the exporter each have specific responsibilities to notify BXA regarding any unscheduled unloading. The specific responsibilities of each party are as follows:

(A) The carrier must, within 10 days after date of unloading, report the facts to the nearest American Consulate and to the agent of the carrier located in the United States. Within 10 days after receipt of such report, the agent must send a copy of the report to BXA. The report must include:

(1) A copy of the manifest of such diverted cargo;

(2) A statement of the place of unloading; and;

(3) The name and address of the person in whose custody the items were delivered.

(B) BXA will inform the exporter of the unloading. Within 10 days following receipt of this notice, the exporter must inform BXA of the proposed disposition of the items. The exporter may not dispose of the items without approval of BXA.

**§ 758.6 Destination control statement.**

(a) *Requirement for destination control statement.* (1) The destination control statement shown in paragraph (b) of this section must be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering any export from the United States if:

(i) The export is made under authority of a license, including the Special Comprehensive License;

(ii) The export is made under the authority of the following License Exceptions: LVS, GBS, CIV, CTP, TMP, or RPL; or

(iii) The export is made under the “No License Required” provisions of the EAR (as described in § 758.1(a) of this part) if the reason for control of the item as stated in the entry on the CCL is NS or NP.

(2) An exporter or the exporter’s agent may enter a destination control statement on the shipping documents for exports for which no destination control statement is required.

(b) *Text of destination control statement.*

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.

(c) *Additional destination information.* In addition to the destination control statement, an exporter or exporter’s agent may supply additional information on the shipping documents, including the country(ies) to which export or reexport is authorized.

(d) *Permissive reexports.* If reexport or diversion from the original transaction is contemplated and the change from the original transaction is consistent with the license, License Exception, the NLR provisions of the EAR or other authorization and with all other requirements of the EAR, the exporter may so advise its foreign importer without obtaining further authorization from BXA.

(e) *Responsibility for assuring that the destination control statement is used—(1) Exporters.* The exporter is responsible for assuring entry of the destination control statement on the commercial invoice, regardless of whether the exporter actually prepares this docu-

ment. The exporter has this responsibility even if the invoice is prepared by an order party or the exporter acts through an agent.

(2) *Agents of exporters (forwarding agents).* Agents of exporters are also responsible for assuring entry of the destination control statement on the commercial invoice.

(i) If the agent receives from the exporter a copy of a commercial invoice without the correct destination control statement, the agent must:

(A) Notify the exporter in writing;

(B) Request written assurance from the exporter that:

(1) The destination control statement has been properly entered on all other copies of the commercial invoice; and

(2) Any person who received an invoice without the statement has been informed in writing of the restrictions in the statement;

(ii) And either:

(A) Enter the appropriate statement on the agent’s copy of the invoice; or

(B) Return it to the exporter for completion; and

(iii) Keep and make available for inspection, in accordance with part 762 of the EAR, a copy of that person’s notification to the exporter and the original of the exporter’s assurance required by paragraph (e)(2)(i) of this section. (For further recordkeeping requirements, see part 762 of the EAR.)

(iv) If the agent prepares the invoice, the agent’s responsibilities are governed by paragraph (e)(3) of this section.

(3) *Forwarders, carriers and other parties who prepare invoices.* If a forwarder, a carrier acting as a forwarder, or any other party prepares, presents, and/or executes the invoice, the forwarder, carrier, or other party is also responsible for assuring that an appropriate statement is entered on the invoice.

(4) *Carriers and other parties who issue bills of lading or air waybills.* The carrier, or any other party that issues the bill of lading or air waybill, is responsible for assuring that the destination control statement appearing on the corresponding invoice also appears on the bill of lading or air waybill.

(f) *Responsibility for distributing copies of the invoice.* The exporter or other person issuing any invoice containing a

destination control statement must send copies in a manner which assures their arrival either with or prior to arrival of the items being exported to:

(1) The ultimate consignee and the purchaser named in the SED;

(2) The intermediate consignee; and

(3) Any other persons named in the invoice who are located in a foreign country. Nothing contained in this part shall be construed to limit the persons or classes of persons to whom such invoices, bills of lading or air waybills are usually and customarily sent in the course of export trade. The shipper or other person issuing the commercial invoice may comply with the requirements of this section even if the copy of the invoice sent to any of the persons listed in paragraphs (f)(1) or (2) this section omits all reference to price or sales commission provided such invoice otherwise adequately identifies the shipment. As an alternative in lieu of a copy of the commercial invoice, such person may send a copy of the bill of lading or air waybill containing the destination control statement.

(g) *Requirements for bill of lading or air waybill*—(1) *General*. No carrier may issue (and no one may prepare or procure) a bill of lading or air waybill covering an export for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of such bill of lading or air waybill (including all non-negotiable and office copies) contain the destination control statement in clearly legible form.

(2) *Exception for "master" air waybills*. In the case of shipments by air (other than airmail or air parcel post), the requirement of paragraph (e)(2)(i) of this section applies to any air waybill, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, the provisions of paragraph (f) of this section do not apply to a "master" air waybill issued by a carrier to cover a consolidated shipment.

(h) *Requirements for the commercial invoice*. No licensee, shipper, consignor, exporter, agent, or any other person may prepare or issue a commercial invoice for a shipment for which a destination control statement is required

under the provisions of paragraph (a) of this section, unless all copies of the invoice(s) contain the statement in clearly legible form.

(i) *Carrier's responsibility before releasing cargo*. No carrier may release custody of a shipment covered by the provisions of this section to any party without surrender by that party, to the carrier, of a copy of the bill of lading or air waybill bearing on its face the applicable destination control statement, unless either:

(1) Simultaneously with the release, the carrier delivers to such party a written copy of the destination control statement, contained in the carrier's copy of the bill of lading or air waybill for the shipment. The written copy must identify the shipment by bill of lading or air waybill number, name of carrier, voyage or flight number, date, and port of arrival. The carrier must also secure either a signed receipted copy of the written statement or other equivalent written evidence that the statement has been delivered by the carrier; or,

(2) The regulations of the importing country require the carrier to deliver the items directly into the physical possession and control of customs or other government agency for delivery to the consignee or the consignee's agent. In this case, the carrier need not give to, or receive from, the customs or other government agency, or the consignee or the consignee's agent, any document bearing the destination control statement.

[61 FR 12852, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996]

#### **§758.7 Authority of the Office of Export Enforcement, the Bureau of Export Administration, Customs offices and Postmasters in clearing shipments**

(a) *Actions to assure compliance with the EAR*. Officials of BXA, the Office of Export Enforcement, the U.S. Customs Service and postmasters, including post office officials, are authorized and directed to take appropriate action to assure compliance with the EAR. This includes assuring that:

(1) Exports without a license issued by BXA are either outside the scope of the license requirements of the Export



Administration Regulations or authorized by a License Exception; and

(2) Exports purporting to be authorized by licenses issued by BXA are, in fact, so authorized and the transaction complies with the terms of the license.

(b) *Types of actions.* The officials designated in paragraph (a) of this section are authorized to take the following types of actions:

(1) *Inspection of items*—(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the SED, or if there is no SED, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to all exports within the scope of the Export Administration Act or Export Administration Regulations whether or not such exports require a license issued by BXA. The inspection may include, but is not limited to, item identification, technical appraisal (analysis), or both.

(ii) *Place of inspection.* Inspection shall be made at the place of lading or where officials authorized to make those inspections are stationed for that purpose.

(iii) *Technical identification.* Where, in the judgment of the official making the inspection, the item cannot be properly identified, a sample may be taken for more detailed examination or for laboratory analysis.

(A) *Obtaining samples.* The sample will be obtained by the official making the inspection in accordance with the provisions for sampling imported merchandise. The size of the sample will be the minimum representative amount necessary for identification or analysis. This will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(B) *Notification to exporter and consignee.* When a sample is taken, the exporter (or the exporter's agent) and the ultimate consignee will be notified by letter from one of the official designated in paragraph (a) of this section, showing the port of export, date of sampling, export license number (if

any) or other authorization, invoice number quantity of sample taken, description of item, marks and packing case numbers, and manufacturer's number for the item. The original letter will be sent to the exporter or the exporter's agent, the duplicate will be placed in the container that had been opened, and the triplicate will be retained by the inspecting office.

(C) *Disposal of samples.* Samples will be disposed of in accordance with the U.S. Customs Service procedure for imported commodities.

(2) *Inspection of documents*—(i) *General.* Officials designated in paragraph (a) of this section are authorized to require exporters or their agents, and owners and operators of exporting carriers or their agents, to produce for inspection or copying: invoices, orders, letters of credit, inspection reports, packing lists, shipping documents and instructions, correspondence, and any other relevant documents, as well as furnish other information bearing upon a particular shipment being exported or intended to be exported.

(ii) *Cartridge and shell case scrap.* When cartridge or shell cases are being exported as scrap (whether or not they have been heated, flame-treated, mangled, crushed, or cut) from the United States, the U.S. Customs Service is authorized to require the exporter to furnish information bearing on the identity and relationships of all parties to the transaction and produce a copy of the bid offer by the armed services in order to assure that the terms of the Export Administration Regulations are being met and that the material being shipped is scrap.

(3) *Questioning of individuals.* Officials designated in paragraph (a) of this section are authorized to question the owner or operator of an exporting carrier and the carrier's agent(s), as well as the exporter and the exporter's agent(s), concerning a particular shipment exported or intended to be exported.

(4) *Prohibiting lading.* Officials designated in paragraph (a) of this section are authorized to prevent the lading of items on an exporting carrier whenever those officials have reasonable cause to believe that the export or removal from the United States is contrary to

the Export Administration Regulations.

(5) *Inspection of exporting carrier.* The U.S. Customs Service is authorized to inspect and search any exporting carrier at any time to determine whether items are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations. Officials of the Office of Export Enforcement may conduct such inspections with the concurrence of the U.S. Customs Service.

(6) *Seizure and detention.* Customs officers are authorized, under Title 22 of the United States Code, section 401, *et seq.*, to seize and detain any items whenever an attempt is made to export such items in violation of the Export Administration Regulations, or whenever they know or have probable cause to believe that the items are intended to be, are being, or have been exported in violation of the EAR. Seized items are subject to forfeiture. In addition to the authority of Customs officers to seize and detain items, both Customs officials and officials of the Office of Export Enforcement are authorized to detain any shipment held for review of the SED, or if there is no SED, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

(7) *Preventing departure of carrier.* The U.S. Customs Service is authorized under Title 22 of the U. S. Code, section 401, *et seq.*, to seize and detain, either before or after clearance, any vessel or vehicle or air carrier that has been or is being used in exporting or attempting to export any item intended to be, being, or having been exported in violation of the EAR.

(8) *Ordering the unloading.* The U.S. Customs Service is authorized to unload, or to order the unloading of, items from any exporting carrier, whenever the U.S. Customs Service has reasonable cause to believe such items are intended to be, or are being, exported or removed from the United States contrary to the EAR.

(9) *Ordering the return of items.* If, after notice that an inspection of a shipment is to be made, a carrier de-

parts without affording the U.S. Customs Service, Office of Export Enforcement, or BXA personnel an adequate opportunity to examine the shipment, the owner or operator of the exporting carrier and the exporting carrier's agent(s) may be ordered to return items exported on such exporting carrier and make them available for inspection.

(10) *Designating time and place for clearance.* The U.S. Customs Service is authorized to designate times and places at which U.S. exports may move by land transportation to countries contiguous to the United States.

[61 FR 12852, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

**§ 758.8 Return or unloading of cargo at direction of BXA, the Office of Export Enforcement or Customs Service.**

(a) *Exporting carrier.* As used in this section, the term "exporting carrier" includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in charge of the vessel, aircraft, or other kind of carrier, whether such person is located in the United States or in a foreign country.

(b) *Ordering return or unloading of shipment.* Where there are reasonable grounds to believe that a violation of the Export Administration Regulations has occurred, or will occur, with respect to a particular export from the United States, BXA, the Office of Export Enforcement, or the U.S. Customs Service may order any person in possession or control of such shipment, including the exporting carrier, to return or unload the shipment. Such person must, as ordered, either:

(1) Return the shipment to the United States or cause it to be returned or;

(2) Unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of BXA. For the purpose of this section, the furnishing of a copy of the order to any person included within the definition of exporting carrier will be sufficient notice of the order to the exporting carrier.

(c) *Requirements regarding shipment to be unloaded.* The provisions of § 758.5(b) and (c) of this part, relating to reporting, notification to BXA, and the prohibition against unauthorized delivery or entry of the item into a foreign country, shall apply also when items are unloaded at a port of call, as provided in paragraph (b)(2) of this section.

(d) *Notification.* Upon discovery by any person included within the term “exporting carrier,” as defined in paragraph (a) of this section, that a violation of the EAR has occurred or will occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person must immediately notify both:

(1) The Office of Export Enforcement at the following address: Room H-4520, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230, Telephone: (202) 482 1208, Facsimile: (202) 482-0964; and

(2) The person in actual possession or control of the shipment.

#### § 758.9 Other applicable laws and regulations.

The provisions of this part 758 apply only to exports regulated by BXA. Nothing contained in this part 758 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing SEDs and manifests, or any applicable rules and regulations of the U.S. Customs Service.

### PART 760—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

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AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12862, Mar. 25, 1996, unless otherwise noted.

#### § 760.1 Definitions.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Definition of Person.* For purposes of this part, the term *person* means any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country. This definition of person includes both the singular and plural and, in addition, includes:

(1) Any partnership, corporation, company, branch, or other form of association or organization, whether organized for profit or non-profit purposes;

(2) Any government, or any department, agency, or commission of any government;

(3) Any trade association, chamber of commerce, or labor union;

(4) Any charitable or fraternal organization; and

(5) Any other association or organization not specifically listed in paragraphs (a)(1) through (4) of this section.

(b) *Definition of “United States Person”.* (1) This part applies to United States persons. For purposes of this part, the term *United States person*